SUPREME COURT, U. S.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1967

No. 1245

IN RE LORING J. WHITESIDE,
*Petitioner*

## PETITION FOR REHEARING

LORING J. WHITESIDE
*Petitioner, pro se.*
South Pease Road, Woodbridge,
New Haven, Connecticut 06525

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

## PETITION FOR REHEARING

Now comes Loring J. Whiteside, petitioner in No.1245, and respectfully prays the Court to grant a rehearing on 3 separate grounds contained in the numbered paragraphs embodied in an affirmation as follows:

STATE OF CONNECTICUT:
: SS. New Haven, June 11,1968
COUNTY OF NEW HAVEN :

The petitioner, Loring J. Whiteside of Woodbridge Connecticut, affirms before a notary and represents to this Court that having been emboldened by 5 years of close observation of fraud and chicanery and shocking illegalities on the part of Connecticut State Judges and Justices, in which State processes to enforce his 3 clients' constitutional rights under the 1st & 14th Amendments to underground burial of their married daughter's dead body, were utterly and completely exhausted, on August 5, 1966 filed Complaint No.11,551 (Appendix No.2, pp.A-22 to A-34) in the Federal District Court to enforce said constitutional rights and for damages for their protracted denial by the subterfuge of 22 defendants. In so doing petitioner acted in faithful adherence to the mandatory requirements of CANONS 15 & 29 of Professional Ethics; in compliance with the recommendation of Chief Judge Phillips of the Tenth Circuit in his capacity as official spokesman of the American Bar Association (Conduct of Judges & Lawyers,p. 153); and in pursuance of the admonition of Mr. Justice

Frankfurter in Bridges v. California, 314 U.S.252,289, where he said:

"Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions. **** judges must be kept mindful of their limitations and of their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt."

2. One of the principal grounds upon which this rehearing petition is based is to give this Court an opportunity, as the highest Court in the land, to put an end, so far as it is concerned, to the lengthy and almost insurmountable problem of the American Bar Association in getting the judges of the nation, both State and Federal, to honor their own CANONS of Judicial Ethics. This is emphasized by Judge J.Warren Madden of the U.S.Court of Claims in Washington, D.C. in the March 1952 Annals of the American Academy, Vol.280, page 60 as quoted on page 14 of the Petition; and by Chief Judge Phillips of the U.S.Court of Appeals in his book on Conduct of Judges & Lawyers at page 151 where he says "The survey shows the imperative need for improvement in the matter of judicial conduct."(Petition p.15). This same subject "Discipline of Judges", is treated by George E.Brand, former President of the Detroit Bar Association, of the State Bar of Michigan & of the American Judicature Society, in a 1960 article in Vol.46, p.1315 of the American Bar Association Journal, where he says:

"Much of the criticism of courts and judges could be met if the constitutional powers of supervision of their work were more effectively exercised than they are at present. *** The consensus of the national conference is that the traditional methods of impeachment and legislative address should be retained, though they are inadequate and for most needs should be supplemented; that there is need for a less cumbersome method of discipline or removal of any judge whose conduct has subjected or is likely to subject the court to public censure or reproach, or is prejudicial to the administration of justice; that the most urgent need is methods to deal with judicial conduct not warranting or requiring removal."

And this year the Cromwell Library of the American Bar Foundation has in course of preparation a report on the results of a recent survey of judicial disability, fitness and removal for misconduct. It would be quite a boost of encouragement to the American Bar Association and its Foundation, if they could point to some concrete case or action of the highest Court in the land, demonstrating its whole hearted backing of the CANONS OF JUDICIAL ETHICS which have been so irreverently ignored by so vast a number of judges for a very long period of time.

3. There are 8 JUDICIAL CANONS important for observance in this case which have been viciously violated, trampled underfoot and dragged in the mud. Briefly they are as follows:

(2) Courts are to promote justice and thus to serve the public interest.

(3) It is the duty of all judges in the U.S. to support the federal constitution *** they should fearlessly observe and apply fundamental limitations and guaranties.

(4) He should avoid infractions of law ***

(5) A judge should be impartial *** & diligent in endeavoring to ascertain the facts.

(8) It is desirable, too, *** that he should cooperate with other judges of the same court, and in other courts, as members of a single judicial system, to promote the more satisfactory administration of justice.

(11) A judge should utilize his opportunities to criticize and correct unprofessional conduct of attorneys and counselors (this includes all judges who are attorneys) brought to his attention; and if adverse comment is not a sufficient corrective should send the matter at once to the proper investigating and disciplinary authorities.

(33) *** He should, *** be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct.

(34) He should be impartial *** administer justice according to law *** nor for the purpose of advancing his personal ambitions or increasing his popularity.

I. REPORT ON UNPROFESSIONAL CONDUCT FOR CORRECTION

4. The petitioner herewith tenders a report on various attorneys all of whom are also Federal Judges, so as to afford the 9 members of this Court an opportunity "to criticize and correct unprofessional", and even criminal conduct pursuant to CANON 11 above:

District Judges Robert C. Zampano and T. Emmet Clarie can be given an almost perfect bill of health so far as misbehavior is concerned, as can be gathered from a report on them to be found on page 12 of the petition for Certiorari. And it is only fair to state that it was Judge Clarie's friendly warning as to the jurisdictional opposition bound to arise at the very first hearing, which sent petitioner to the law libraries for an intensive two weeks research, which resulted in a discovery of the long line of EXTRINSIC FRAUD cases beginning with U.S. v. Throckmorton, 98 U.S. 61 with modification contained in Marshall v. Holmes, 141 U.S. 589 as being applicable to several of the State Judges & Justices named as defendants, which were made the occasion for filing an amended complaint with two annexed EXHIBITS on August 24, 1966.

5. The situation with respect to Chief Judge Wm. H. Timbers is quite different. He couldn't find any legitimate ground for asserting lack of jurisdiction, so he twisted some facts, lied about others and succeeded in fabricating some 6 false grounds, all of which collapsed upon critical examination and were demonstrated to be falsehoods in a motion to set aside the final judgment of denial he had entered on Sept.19, 1967, and which was placed on the calendar for hearing before Judge Timbers on October 16,1967. When petitioner objected to his sitting on the motion because of disqualification, Judge Timbers acquiesced by saying:

"But be that as it may, I will refer this matter, that is, the motion on this calendar, to Judge Blumenfeld for all purposes, including the propriety of a disbarred attorney continuing to practice law in this court. The matter, therefore, is off and referred to Judge Blumenfeld for all purposes. **** And since you don't want me to hear it anyway, I take it

everybody will be satisfied if I refer it to Judge Blumenfeld. And it is so ordered. You may call the next case."

Nothing has been heard from that motion from that day to this. It seems to have been pocketed. Other comments made by Judge Timbers appearing in the transcript of that hearing clearly indicate a conspiracy existing between the two Judges to deprive petitioner of his clear right to continue practicing law pending appeal as required by Rules 62(d) & 73(d) of Civil Procedure. (See Appendix,pp.AP-4 to 6 & Appendix #2, p.22)

The 6 FALSEHOODS above mentioned pronounced in writing by Judge Timbers will be found buried in plausible language&reasoning in Tkaczyk v. Gallagher, 259 F.Supp.584, and are spelled out in careful detail in a 6 page affirmation of the petitioner,dated June 19,67, in support of motion to vacate and set aside the aforesaid judgment of dismissal, only they were labeled "MISTAKES OF FACT" out of respect for Judge Timbers in an effort to let him down easily, which he did not appear to appreciate, for he flatly denied the motion without comment on September 19,1967, which indicated that he intended the mistakes instead of their being accidental. This opened the way for the 6 falsehood motion of September 29 aforesaid. The 6 MISTAKES OF FACT motion is composed of substantially the same material presented to this Court in a PETITION FOR REHEARING under date of May 12,1967 in No.1372 Misc.O.T. 66, which was denied without comment on April 17,1967.

This opinion in 259 F.Supp.584 seems to come within the prohibition of 18 U.S.C.1018, providing that:

"Whoever, being a public officer or other person authorized by law of the U.S. to make or give a certificate,or other writing,knowingly makes and delivers as true such a certificate or writing,containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere provided by law, shall be fined not more than $500. or imprisoned not more than one year, or both."

This falsehood in writing seems also to qualify Judge Timbers for prosecution under the perjury law, 18 U.S.C 1621, which imposes a fine up to $2000., or imprisonment up to 5 years or both, by reason of the Judicial

oath of office Judge Timbers was obliged to take as set forth in 28 U.S.C.453.

The State of Connecticut also required of lawyer Timbers when he was admitted to the State bar the following oath (Stat.1-25):

"You solemnly swear that you will do no falsehood, nor consent to any to be done in court,and if you know of any to be done, you will give information thereof to the judges, or one of them, that it may be reformed;"

This oath serves to render Judge Timbers liable to 5 years imprisonment for perjury under State Statute 53-143. But this isn't all. 18 U.S.C.13 (Chap.1) provides that:

"Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in Sec.7 of this title, is guilty of any act or omission which although not made punishable if committed or omitted within the jurisdiction of the State *** in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment."

Still another State Statute (54-197) known as the Conspiracy statute would seem to apply to the joint action of both Judges Timbers and Blumenfeld who worked together as a well greased team to accomplish their nefarious object of disbarring the petitioner, first, to get the heat off the 8 State Judges, and finally to get the heat off of Timbers himself. This Conspiracy Statute is generous. It imposes up to $5000. fine or up to 15 years in prison, or both.

6. Then all of the above criminal statutes, both federal and state, are applicable to Judge Blumenfeld for his prodigious falsehood emblazoned in his opinion of June 20,1967, 3rd paragraph on page A-9 of Appendix #2, where he utilized his own falsehood as his sole basis for petitioner's disbarment. And the Conspiracy Statute ties him up tight with Timbers, so that both of them share the fines and imprisonments together for what they did separately, each in his own respective sphere. They worked well together. A perfect set-up,

which no lawyer in the State would be likely to seek to upset because of the vested power wielded by these two Federal District Judges, who are pouring ignominy by the carload upon the legal profession and have the American Bar Association at its wits' end to know how to terminate such hooliganism. In all likelihood the American Bar Association has no knowledge of this particular case, but its literature indicates widespread and serious difficulties in getting the judiciary to be obedient to the CANONS of Judicial Ethics.

7. The 3 U.S.Court of Appeals Judges in New York City, who in 386 F.2d 807 adopted Judge Blumenfeld's major falsehood as truth and did so in writing, thereby joined the conspiracy themselves and have rendered themselves liable to all of the federal fines and imprisonments as have been pointed out above for repeating in writing a gigantic falsehood with full knowledge of its falsity. These guilty Appeals Judges are Chief Judge Lumbard, Irving R.Kaufman and Wilfred Feinberg. They have no more excuse for planting falsehoods in their PER CURIAM than had Judge Blumenfeld. Besides having the original MOTION TO QUASH with its 11 pages and 38 page APPENDIX present before them in the certified RECORD of the case, the petitioner had furnished them with 3 additional Xerox copies for ease of private consumption. So all 3 Judges were well supplied with the abundant documentary evidence of everything complained of. And the other 6 Judges in that Court were all asked to participate in a REHEARING IN BANC, which all refused to do. It does seem that those 6 Judges are reprehensible for MISPRISION OF FELONY under 18 U. S.C.4, which provides:

"Whoever, having knowledge of the actual commission of a felony, cognizable by a Court of the U.S., conceals and does not as soon as possible make known the same to some Judge or other person in civil or military authority under the U.S., should be fined not more than $500. or imprisoned not more than 3 years or both."

II. FAILURE TO IDENTIFY CHARGES REQUIRING PROOF DEPRIVED PETITIONER OF DUE PROCESS.

8. On April 8, 1968, subsequent to the filing

of the Petition for Certiorari in the instant case, this Court handed down a decision In re John Ruffalo, Jr., No.73, October Term 1967, 36 Law Week 4284, in which Mr. Justice Douglas wrote the opinion, reversing the disbarment of Ruffalo for want of due process in that he was not notified in advance of an additional charge against him and had no notice of it until the hearing was about half over. This was somewhat the very same predicament petitioner found himself early in this proceeding as is apparent from Judge Blumenfeld's ruling of May 17,1967 (App. p.A-5 & A-6) on motion for more definite statement, followed by petitioner's assertion that "Not even to know what the charges are is a deprivation of due process of law and recognized as such all over the land." (App.#2, p.A-47,par.4) This was such a minor issue as compared with the 6 falsehoods of Judge Timbers and the gorgeous falsehood of Judge Blumenfeld, and the 3 other due process questions (II, III & IV) discussed on pages 21 to 23 of the Petition, that it was crowded out of the Petition to this Court and never had a chance of consideration by this Court. And yet, in the interim, a similar constitutional point released Ruffalo and is presented herewith as a new ground for rehearing.

9. The disadvantage of this denial of a more definite statement by Judge Blumenfeld is made clear when the Solicitor-General rises up on page 2 of his Opposition Brief and points out that the State Supreme Court was alleged in Complaint 11,551 to have "listened to a string of falsehoods related to them in open Court" and "knowingly used them to fabricate a false charge against the plaintiffs of failing to use due diligence in prosecution of their appeal, which they knew was not true." This statement is very simple of proof from various transcripts, but was not mentioned in either the MEMO of the U.S.Attorney (A-14 to 21) or the Order to Show Cause itself (A-12 to 14). Hence, no effort at any time was made by the petitioner to justify the remarks which for the first time in the entire case was raised by the Solicitor-General, whom the petitioner holds in such high esteem that he cannot attribute this reference to his friendship for Judge Blumenfeld with whom he associated three years as fellow

members of the Class of 1928 at Harvard Law School. But it demonstrates the dangers to which petitioner was exposed when Judge Blumenfeld denied identification of the charges calling for proof.

III. VIOLATION OF 7TH AMENDMENT RIGHT TO TRIAL BY JURY.

10. There is no doubt as to the right of the 3 plaintiffs to a trial by jury of the issues of fact likely to develop in their original action #11,551, temporarily at a stand-still in the U.S.District Court. This right was claimed by them as appears on page A-38. And there is little doubt that Judges Timbers and Blumenfeld realized that by the strategy of instituting disbarment proceedings, they could escape a jury and substitute themselves as judges and thereby insure what the judgment was going to be, even if it involved falsehood and perjury in which they both indulged with distressing facility. Realizing that this was a fraudulent evasion of his clients' rights to jury trial and of his own rights to an impartial hearing, petitioner on page A-52 demanded trial by jury of all issues of fact in the disbarment proceeding as well as in the Counterclaim which followed against the two Judges; but typical of their cunning, this demand for jury trial was totally ignored by both Judges and resulted in the moral and ethical disaster, of which this Court is already aware, in both the District and Appeals Courts. The fraudulent and deliberate violation of this 7th Amendment right belonging both to the petitioner and his 3 clients, appears to be sufficient to justify a rehearing.

11. The undersigned hereby certifies that this petition is presented in good faith, is not interposed for delay, in my judgment is well founded, and is restricted to grounds based upon intervening circumstances of substantial effect, or to other grounds of substantiality available to petitioner, although not previously presented.

Affirmed before me this 11th day of June, 1968

Loring J. Whiteside

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Notary Public. My commission expires April 1st 1970